

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LENNON K. DAVIS,	§
	§
Defendant Below,	§ No. 316, 2013
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID Nos. 1110006090
Plaintiff Below,	§ 1111018931, and 1111018900
Appellee.	§

Submitted: July 15, 2013

Decided: July 17, 2013

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 17th day of July 2013, upon consideration of the appellant’s opening brief, the State’s motion to dismiss or alternatively to affirm, and the appellant’s response to the motion to dismiss, it appears to the Court that:

(1) The defendant-appellant, Lennon Davis, appeals from the Superior Court’s sentence for his third violation of probation (“VOP”). The State has filed a motion to dismiss for lack of a justiciable controversy or alternatively to affirm the judgment below on the ground that it is manifest on the face of Davis’ opening brief that his appeal is without merit. After careful consideration, we deny the motion to dismiss but grant the motion to affirm.

(2) In October and November of 2011, Davis was arrested and charged in three different burglaries. He pled guilty in December 2011 to three counts of Burglary in the Third Degree and one count of Criminal Mischief. The Superior Court sentenced him to a total period of nine years at Level V incarceration, with credit for ten days served, to be suspended after serving ninety days for decreasing levels of supervision. In September 2012, Davis was found in violation of his probation and was sentenced to a total of eight years and nine months at Level V incarceration, to be suspended after serving seventeen days for decreasing levels of supervision. In December 2012, Davis was again found in violation of probation. The Superior Court sentenced him to a total period of eight years and eight months at Level V incarceration, to be suspended after serving sixteen days for decreasing levels of supervision. In May 2013, Davis was found guilty of his third VOP and was sentenced to a total period of eight years and six months at Level V incarceration, to be suspended after serving nine days for decreasing levels of supervision. This appeal followed.

(3) In his opening brief on appeal, Davis argues that his violation was unfair and unsupported by the evidence because the violation was presented by a probation officer from the Plummer Center, and not by a probation officer from the Morris Center where Davis was housed. In its motion to dismiss, the State asserts that the appeal does not present a justiciable controversy because Davis does not

dispute that he violated the terms of his probation. We disagree with the State's interpretation of Davis' opening brief. Accordingly, we deny the motion to dismiss.

(4) Nonetheless, we must grant the State's motion to affirm. Davis' only contention on appeal is that his violation was not supported by sufficient evidence. As this Court has held many times, the failure to include adequate transcripts of the proceedings, as required by the rules of the Court, precludes appellate review of a defendant's claim of error in the proceedings below.¹ We are unable to review Davis' sole argument in this appeal because he failed to order and provide the Court with a copy of the transcript from his VOP hearing.²

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹ *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

² *See Hawkins v. State*, 2010 WL 3341578 (Del. Aug. 25, 2010) (holding that failure to provide transcript of VOP hearing precludes review of argument on appeal).